

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

10 DONALD E. PHILIPPI, JR., )  
11 Petitioner, ) 3:11-cv-00447-HDM-VPC  
12 vs. )  
13 WARDEN PALMER, *et al.*, ) ORDER  
14 Respondents. )

15                   This is an action on a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 in  
16 which petitioner, a state prisoner, is proceeding *pro se*. The Court previously determined that the  
17 petition contained unexhausted, conclusory or not cognizable grounds for relief and dismissed the  
18 noncognizable and conclusory grounds from the petition (ECF No. 31). The Court found that a single  
19 ground (ground 1(g)) was exhausted and proper for review, but afforded petitioner the opportunity to  
20 show good cause for why he failed to exhaust his state court remedies as to the other claims.  
21 Petitioner's motion for stay was denied because he failed to make a sufficient showing of good cause  
22 under *Rhines v. Weber*, 544 U.S. 269 (2005) (ECF No. 41). Before the Court now is petitioner's  
23 Response to the Court's Order of October 3, 2012, in which petitioner indicates that he will not abandon  
24 his claims for relief (ECF No. 42).

25 Because the Court cannot grant relief as to any unexhausted claims and cannot entertain  
26 a petition which contains exhausted and unexhausted claims, *see Rose v. Lundy*, 455 U.S. 509, 521-22  
27 (1982); *Szeto v. Rusen*, 709 F.2d 1340, 1341 (9th Cir.1983), the petition shall be dismissed without  
28 prejudice.

1                   **IT IS THEREFORE ORDERED** that the petition for writ of habeas corpus pursuant  
2 to 28 U.S.C. § 2254 (ECF No. 4) is **DISMISSED WITHOUT PREJUDICE** and this case shall be  
3 **CLOSED**. The Clerk shall enter judgment accordingly.

4                   Dated this 15<sup>th</sup> day of November, 2012.

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8                   UNITED STATES DISTRICT JUDGE

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